

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Crl.Misc. No.13186-M of 2006
Date of Decision:- 07.12.2007**

Mukesh Kumar

....Petitioner(s)

through
Mr.A.S.Virk, Advocate

vs.

Sant Lal

....Respondent(s)

through
Mr.G.S.Duhan, Advocate.
Mr.Gurmail Singh, Advocate.

CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

- 1) Whether Reporters of the local papers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

SURYA KANT, J. (ORAL)

The prayer in this petition under Section 482 Cr.P.C. is for quashing of a complaint under Section 138 of the Negotiable Instruments Act titled as “**Sant Lal vs. Mukesh Kumar and another**” (Annexure P-4) as well as the summoning order dated 24.10.2005 passed therein.

On 3.3.2006, when this petition came up for motion hearing, it was contended on behalf of the petitioner that “the complaint is not based on the allegation of dishonour of cheque on account of insufficient funds and thus, Section 138 of the Negotiable Instruments Act is not attracted.”

After hearing learned counsel for the petitioner and upon perusal of the impugned complaint (Annexure P-4), I am of the considered view that for the purpose of forming a, *prima facie*, opinion regarding satisfaction of ingredients of Section 138 of the Act, the averments made in the impugned complaint are required to be read in continuity and in

conjunction.

If one reads paragraphs 4 and 5 along with Paragraphs 9 and 10 of the impugned complaint, it stands crystalized that :-(i) the complainant had allegedly advanced a loan of Rs.50,000/- to accused No.2 on 1.12.1997; (ii) the aforesaid loan was advanced with the assurance to be repaid along with interest at the rate of 2% per month; (iii) another amount of Rs.25,000/- was borrowed by accused No.2 on 12.2.1998 and receipt thereof was duly acknowledged; (iv) the accused persons, however, refused to return the loan amount and thereafter a compromise was effected between the parties on 27.4.2004 which was reduced into writing; (v) the accused persons refused to adhere to the said compromise, inasmuch as while Rs.5,000/- was returned by them in cash, nine cheques in the sum of Rs.5,000/- each bearing Nos.044527 to 044535 were issued which were to be drawn from the account of accused No.1 bearing No.14830; (vi) upon presentation, the first cheque bearing No.044527 dated 27.5.2004, was dishonoured by the Bankers of the accused with the remarks that “it did not tally the signatures”; and (vii) thereafter, a statutory notice was served upon the accused persons within the stipulated period, followed by the impugned complaint.

It may be true that the onus is upon the complainant to prove that the cheques were issued by the accused persons actually to discharge their debt liability, however, in the totality of the circumstances, the case does not fall within the parameters of Section 482 Cr.P.C. where this Court can form any definite opinion and throttle the proceedings at the threshold.

Consequently, no case to quash the impugned complaint and the proceedings arising therefrom is made out.

Dismissed.

However, the petitioner shall be at liberty to raise his contentions before the learned Judicial Magistrate at an appropriate stage.

December 07, 2007
poonam

(SURYA KANT)
JUDGE